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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|------------------------|---------------------|------------------|
| 10/686,969  | 10/16/2003  | Charles R. Kellner JR. | MS1-1683US          | 8087             |
| 22801   | 7590        | 07/14/2009             | EXAMINER            |                  |
| LEE & HAYES, PLLC<br>601 W. RIVERSIDE AVENUE<br>SUITE 1400<br>SPOKANE, WA 99201 |             |                        |                     | HASAN, SYED Y    |
| ART UNIT  |             | PAPER NUMBER           |                     |                  |
| 2621  |             |                        |                     |                  |
|   |             |                        | MAIL DATE           | DELIVERY MODE    |
|   |             |                        | 07/14/2009          | PAPER            |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/686,969             | KELLNER ET AL.      |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | SYED Y. HASAN          | 2621                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 December 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1, 3 - 19, 21 - 25, 27, 28, 30, 32, 33 and 36 - 43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1, 3 - 19, 21 - 25, 27, 28, 33 and 36 - 40 is/are allowed.
- 6) Claim(s) 30, 32 and 41 - 43 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/8/2003 and 12/22/2003.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### **Response to Arguments**

1. Applicant's arguments with respect to claims 1, 3 – 19, 21 – 25, 27, 28, 30, 32, 33 and 36 - 43 filed on 12/23/2008 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility” (Official Gazette notice of 22 November 2005), Annex IV reads as follows:

Claims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism, per se, and as such are nonstatutory natural phenomena. O'Reilly, 56 U.S. (15 How.) at 112-14. Moreover, it does not appear that a claim reciting a signal encoded with functional descriptive material falls within any of the categories of patentable subject matter set forth in Sec. 101.

... a signal does not fall within one of the four statutory classes of Sec. 101

... signal claims are ineligible for patent protection because they do not fall within any of the four statutory classes of Sec. 101.

Claims 30, 32 and 41 - 43 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter as follows.

Claims 30, 32 and 41 - 43 define “computer readable media” with descriptive material. While “functional descriptive material” may be claimed as a statutory product (i.e., a “manufacture”) while embodied on a tangible computer readable medium, recording medium embodying that same functional descriptive material is neither a process nor a product (i.e., a tangible “thing”) and therefore does not fall within one of the four statutory class of §101. Rather, “media” is a form of energy, in the absence of any physical structure or tangible material. When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer- readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory.

Applicant’s specification page 22, lines 17 – 21 discloses “Computer 600 can include a variety of computer-readable media identified as communication media. Communication media typically embodies computer-readable instructions, data structures, program modules, or other data in a modulated data signal such as a carrier wave or other transport mechanism and includes any information delivery media”. Here computer readable media is defined as a carrier wave. Hence computer readable media is non-statutory subject matter.

***Allowable Subject Matter***

3. Claims 1, 3 – 19, 21 – 25, 27, 28, 33 and 36 - 40 are allowed.

4. The following is a statement of reasons for the indication of allowable subject matter:

The present invention of claims 1, 3 – 19, 21 – 25, 27, 28, 33 and 36 - 40 is directed to a system and method for managing frame rates during multimedia playback.

Independent claim 1 identifies the unique distinct feature “if an actual playback timing of the video data lags the ideal playback timing, the lag resulting from a limited processing power of the computer implementing the method, varying a frame rate associated with the video data using a smoothing function to recover toward the ideal playback timing, wherein smoothly varying the frame rate includes controlling the frame rate using a frame-dropping algorithm that drops frames in the video data in accordance with the smoothing function.”

The closest prior art, Itokawa (US 2001/0033620) discloses determining an ideal playback timing associated with the video data, the ideal playback timing determined at least in part by way of information encoded in the video data( figs 3A,B and C and fig 18A, para 0109). However Itokawa fails to anticipate or render the above mentioned underlined limitations obvious.

Hence claim 1 is allowed.

Since claims 3 - 16 depend on claim 1, therefore they are allowed.

Independent claims 17, 25 and 33 identify the unique distinct feature “if the frame skip factor is greater than the ideal frame rate, adding the ideal frame rate to an iterator; and if the iterator is greater than or equal to the frame skip factor, subtracting the frame skip factor from the iterator and showing the current frame.”

Therefore claims 17, 25 and 33 are allowed.

Since claims 18, 19 and 21 - 24 depend on claim 17, claims 27, 28 and 36 – 40 depend on claim 25, hence they are also allowed.

Therefore claims 1, 3 – 19, 21 – 25, 27, 28, 33 and 36 - 40 are allowed.

5. Claims 30, 32 and 41 - 43 would be allowable if amended to overcome the rejection(s) under 35 U.S.C. 101 set forth in this Office action as mentioned above.

Independent claim 30 identifies the unique distinct feature “if the frame skip factor is greater than the ideal frame rate, adding the ideal frame rate to an iterator; and if the iterator is greater than or equal to the frame skip factor, subtracting the frame skip factor from the iterator and showing the current frame.”

Since claims 32 and 41 - 43 depend on claim 30, hence they are also not allowed allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Syed Y. Hasan whose telephone number is 571-270-1082. The examiner can normally be reached on 9/8/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thai Tran can be reached on 571-272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. Y. H./  
06/17/2009

/Thai Tran/  
Supervisory Patent Examiner, Art Unit 2621